

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DWAYNE B., a minor, by his Next
Friend, John Stempfle, et al., for
themselves and others similarly
situated,

Plaintiff,

-v-

Case No. 06-cv-13548
Hon. Nancy G. Edmunds

GRETCHEN WHITMER, in her official
capacity as Governor of the State of
Michigan, et al.,

Defendant.

STATUS CONFERENCE VIA ZOOM VIDEO CONFERENCE

BEFORE THE HONORABLE NANCY G. EDMUNDS
United States District Judge
231 West Lafayette Boulevard
Detroit, Michigan
July 2, 2024

APPEARANCES:

FOR THE PLAINTIFF: Samantha Bartosz
Children's Rights
330 Seventh Avenue,
New York, New York 10001

FOR THE DEFENDANT: Neil Giovanatti
Erin Harrington
Michigan Attorney General
P.O. Box 30758
Lansing, Michigan 48909

ALSO PRESENT:

Monitors Kevin Ryan and Eileen Crummy, Directors Demetrius
Starling and Elizabeth Hertel

To Obtain a Certified Transcript Contact:

Stacy K. Locher, CSR-5699
(313) 234-2609 stacy_locher@mied.uscourts.gov
www.transcriptorders.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

<u>MATTER</u>	<u>PAGE</u>
<u>STATUS CONFERENCE</u>	
Proceedings.....	3
Certificate of Court Reporter.....	29

1 Detroit, Michigan

2 July 2, 2024

3 11:03 a.m.

4

- - -

5 THE CLERK: The United States District Court for the
6 Eastern District of Michigan is now in session. The Honorable
7 Nancy G. Edmunds, United States District Court judge,
8 presiding. Calling Case No. 06-13548, Dwayne B., et al.,
9 versus Whitmer, et al.

10 Counsel, please place your appearances on the record.

11 MS. BARTOSZ: Good morning, your Honor. This is
12 Samantha Bartosz from Children's Rights on behalf of the
13 plaintiff class of children.

14 THE COURT: Good morning. Anyone else?

15 MR. GIOVANATTI: Good morning, your Honor. The Zoom
16 chopped off. This is Neil Giovanatti from the Michigan
17 Attorney General's office.

18 THE COURT: Good morning.

19 MR. GIOVANATTI: Can you hear me, your Honor?

20 THE COURT: I can hear you, yes. I see you now too.

21 MR. GIOVANATTI: I apologize. My Zoom keeps closing.
22 Neil Giovanatti for the AG's office. My co-counsel, Erin
23 Harrington, is also on the line as well as Director Hertel and
24 Director Starling from MDHHS.

25 THE COURT: Good morning, everyone. I see Eileen,

1 Ms. Crummy, is here and Kevin.

2 MR. RYAN: Yes, your Honor, Kevin Ryan with Eileen
3 Crummy, two of the court appointed monitors.

4 MS. CRUMMY: Good morning, your Honor.

5 THE COURT: Good morning. So this is report number
6 24, seems like it's been my whole judicial life working on this
7 case one way or the other but it looks like in many ways we are
8 moving in the right direction finally.

9 Ms. Crummy and Mr. Ryan, do you prefer to give your
10 report first or would you rather hear from the parties first
11 and then give your report?

12 MR. RYAN: We prefer to go first, your Honor.

13 THE COURT: Go ahead, please.

14 MR. RYAN: Thank you, your Honor.

15 Your Honor, last January the parties jointly submitted
16 a stipulated order amending the MISEP to the court which the
17 court approved on January 25th, 2024. The order recognizes
18 Michigan's significant and sustained progress in many areas and
19 continues to stress the obligation of the state to ensure child
20 safety for plaintiff class children.

21 The order reduces the number of remaining commitments
22 that DHHS must meet under the MISEP with 33 provisions exiting
23 the agreement and another 11 provisions moving out of active
24 monitoring. Additionally, the order amends performance
25 measures and standards for six commitments.

1 This report to the court reflects the efforts of the
2 DHHS leadership team and the status of Michigan's reform
3 efforts as of June 30th, 2023. Defined as MISEP period 24,
4 this report includes progress for the first half of 2023 and
5 covers the first period of DHHS's performance on the
6 maltreatment in care rate -- excuse me, performance under the
7 stipulated order amending the MISEP.

8 Additionally, it includes performance on the
9 maltreatment in care rate for federal fiscal year 2023 which
10 ran from October 1st, 2022 to September 30, 2023. Michigan
11 DHHS met or exceeded required performance standards in six of
12 28 areas monitored for compliance in MISEP period 24 and in
13 three additional areas of those 28, DHHS's performance came
14 within 10 percent of the performance standard.

15 Among the areas where the agency achieved positive
16 levels of performance are support for youth transitioning to
17 adulthood permanency. During MISEP 24 the agency achieved the
18 1.4 percent increase from DHHS's MISEP 23 performance and per
19 the stipulated order, positive trending during this period
20 makes this commitment eligible for immediate exit from the
21 MISEP and the court order.

22 Adoption caseloads. The parties agreed that adoption
23 case workers shall have a caseload of no more than 15 children.
24 Per the stipulated order, after two consecutive periods of
25 positive trending, this commitment will become eligible to move

1 to structures and policies which essentially is not active
2 monitoring. DHHS achieved 88.1 percent in MISEP 24
3 representing a 2.6 percent increase from its performance in
4 MISEP 23 and so this is the first period of positive trending.

5 Another example is the separation of siblings. The
6 parties agreed that siblings who enter placement at or near the
7 same time shall be placed together unless specified exceptions
8 are met. Per the stipulated order, after two consecutive
9 periods of positive trending, this commitment will become
10 eligible to move to structure and policies. DHHS achieved
11 80.8 percent in MISEP 24 representing a 2.4 percent increase
12 from its performance in MISEP 23 and so this too is the first
13 period of positive trending.

14 MS. CRUMMY: There were 17 areas where DHHS did not
15 meet required performance standards by more than 10 percentage
16 points as detailed in our report. Child safety remains a
17 paramount interest in this case and both parties have
18 repeatedly expressed to us a commitment to ensure that children
19 in the state's custody are safe. For federal fiscal year 2023,
20 DHHS provided data indicating the state substantiated 459
21 incidents of child maltreatment in care involving 437 children
22 in DHHS custody for an observed rate of 14.5 victimizations for
23 100,000 days in foster care which is considerably higher than
24 the federal standard agreed to by the parties and embedded in
25 this court's order.

1 We comprehensively reviewed a random sample of 120
2 abuse and neglect investigations from federal fiscal year 2023
3 and assessed that 82 investigations were conducted adequately
4 and 38 of the 120 investigations reviewed were deficient. This
5 includes 32 investigations where there was insufficient
6 information gathered to render a finding and six investigations
7 which we determined met the criteria for substantiation under
8 Michigan law. Continuing to improve the adequacy of abuse and
9 neglect investigations and ensuring child safety for children
10 in the class remains paramount in this matter.

11 In closing, your Honor, we want to underscore the
12 tremendous strides that Michigan has made in improving its care
13 for children in foster care and thank the state and its
14 partners for the years of effort that are reflected in the
15 system today and we thank you, Judge Edmunds, for your
16 oversight and guidance with children's interest always foremost
17 in this case. Thank you.

18 THE COURT: Thank you, Ms. Crummy. I'll hear from the
19 parties now and then I'll have some brief response after I've
20 heard from you.

21 MS. BARTOSZ: Thank you. This is Samantha Bartosz
22 with Children's Rights. Nice to see you, your Honor.

23 THE COURT: Nice to see you.

24 MS. BARTOSZ: Since we last met with the court, at the
25 court's suggestion or perhaps direction, the parties met

1 together with the monitors and worked very hard, Judge, at
2 looking through the MISEP and looking for ways to focus our
3 energies to bring this matter toward closure and as the
4 monitors pointed out in their statements, we exited from the
5 MISEP various outcomes where the state had achieved what we
6 sought to see as plaintiffs and we were delighted to see those
7 outcomes in fact exit court jurisdiction. We whittled the
8 MISEP down to those areas that remained out of compliance and
9 remained important to plaintiff in trying to secure an adequate
10 child welfare system.

11 Your Honor, we're most pleased to see further progress
12 by DHHS in coming toward compliance with the open MISEP items
13 that remain and applaud the state on reaching the exit level
14 for a couple of those outcomes. That's what we're all hoping
15 to see and hoping to bring this matter closer to the exit door
16 just as soon as we possibly can has always been the hope of
17 plaintiffs here.

18 Your Honor, with that said, we, as plaintiffs, remain
19 very concerned in relation to the rate of maltreatment in care
20 being reported by DHHS to the federal government. Ms. Crummy
21 spoke to that for federal fiscal year 2023 that reported
22 performance under the child and family service's review outcome
23 was 14.50 versus a score of 9.07 that is required to conform
24 with the federal performance level.

25 That performance, Judge, in 2023 of 14.50 is an

1 extreme worsening, deterioration in performance from the prior
2 two years. Performance was reported as 8.04 in fiscal year
3 2022 and at 5.55 in fiscal year 2021 so --

4 THE COURT: We don't know if this may be a two-edged
5 sword. It could be that we're getting more reports than we got
6 in '22 and '23 and that's why the number is higher. We don't
7 really know at this point because a lot of the investigations
8 have been found to be deficient but maybe the investigations
9 are showing up more instances than they used to.

10 MS. BARTOSZ: That may be, Judge. My point, your
11 Honor, simply to point out that the level of performance is
12 moving at least on paper, Judge, in the --

13 THE COURT: In the wrong direction.

14 MS. BARTOSZ: And that raises serious questions in
15 terms of how do we explain this and how can it be turned
16 around? So in looking at this current MISEP report, we have
17 great concern about outcome 6.1, maltreatment in care, and
18 really look forward to a chance to meet with DHHS leadership
19 and counsel to talk about that matter and explore what may be
20 the systemic obstacles in the way of bringing performance
21 closer to compliance and we hope to be able to set up a meeting
22 to talk about that quite soon.

23 The other matter I just wanted to elevate for the
24 court and child safety is our priority here, I think all
25 parties have recognized that. State performance with respect

1 to psychotropic medications continues to lag. That is a matter
2 of child safety. A child placed erroneously on a psychotropic
3 medication or on a cocktail of such medications can suffer very
4 real physical and emotional harm and we agreed with the state
5 years ago now to bring the informed consent process and medical
6 records process relating to psychotropic medications into
7 compliance with sound standards and it hasn't moved
8 sufficiently forward.

9 So we likewise look forward to a chance to sit down
10 with the state officials and their lawyers and talk about that
11 matter and talk about what steps might be taken to break that
12 loose and move it forward. We are particularly interested in
13 exploring with the state the efforts it made under the
14 corrective action plan that your Honor requested a year ago and
15 whether those bore fruit in certain areas or somehow helps to
16 identify other barriers that might need focus.

17 So from our point of view, it's a day to be pleased
18 about the progress and to encourage continued progress and a
19 day to raise concern with respect to two important safety
20 issues.

21 THE COURT: Thank you, Ms. Bartosz. The state?

22 MS. HERTEL: It appears both of our attorneys are not
23 here.

24 THE COURT: Should we give them a try again?

25 MS. HERTEL. I am texting him.

1 THE COURT: You are welcome to give the report if you
2 want.

3 MS. HERTEL: Let me try to call him quickly. I'm so
4 sorry.

5 (Off the record at 11:19 a.m.)

6 (Back on the record at 11:23 a.m.)

7 MS. HERTEL: I'm going to start with some comments and
8 I will turn it over to Director Starling to make some
9 additional remarks and then I know Neil had a couple of
10 responses on some of the findings specifically in the MISEP 24
11 report but he may have to submit those in writing if he can't
12 be on to verbally express those.

13 Again, I would like to say thank you, your Honor, for
14 this opportunity to continue to update the court with our
15 ongoing efforts and strategies to make sure that children that
16 are placed in our care are safe and are achieving positive
17 outcomes.

18 I would also like to start by acknowledging the
19 stipulated order that was entered earlier this year that did
20 remove several provisions for monitoring and placed a number of
21 other provisions on a clear path to exit in the future. The
22 department greatly appreciates the assistance provided by
23 Magistrate Judge Grand and the monitoring team in helping the
24 parties to reach an agreement to better focus the MISEP.

25 Candidly we were hoping that the MISEP could be

1 further narrowed and other provisions modified, however, we are
2 incredibly happy with the progress that we've obtained and we
3 look forward to those continuing discussions as appropriate to
4 further focus the MISEP on the handful of issues that we
5 believe remain.

6 As to the department's current progress, MDHHS has
7 implemented the Keep Kids Safe Action Agenda which highlights
8 the steps that the department has taken and will continue to
9 take to improve safety and well-being for Michigan children.
10 The Keep Kids Safe Action Agenda focuses on five key
11 categories: Prevention, intervention, stability, wellness and
12 workforce. I'm going to highlight a few actions under each of
13 these very briefly.

14 Under prevention we, as a state, have invested
15 millions of dollars to create more family resource centers
16 which allow Michigan to become one of only five states to
17 receive the Child Safety Forward Grant from the Office for
18 Victims of Crime. The family resource centers work with
19 families that have a higher risk for abuse and neglect to meet
20 their needs sooner.

21 We are also exploring centralized intake prevention
22 pathways. We are currently running a pilot with two agencies
23 that proactively contact families who've identified needs but
24 do not require formal child welfare intervention and we are
25 developing a cross enrollment collaboration between our

1 economic stability administration and our child welfare teams
2 to text families and connect them to community action agencies
3 so they can quickly resolve any concrete economic needs.

4 We've also developed our family impact teams which is
5 another collaboration between the economic stability
6 administration and our child welfare administration where
7 economic stability staff, those are our benefits eligibility
8 staff, are embedded in child welfare units to quickly resolve
9 economic barriers experienced by families. This effort is
10 specifically aimed at preventing removal or being able to
11 return children home sooner.

12 Under intervention we have developed an intervention
13 tool for our CPS workers to use to ensure regular communication
14 between case workers and their supervisors during key points of
15 investigation. We have also actively mapped and identified
16 available substance use disorder services across the state so
17 that families, our workers and our community partners can
18 easily identify nearby resources.

19 Under stability we've established regional placement
20 units to help identify appropriate living arrangements for
21 youth to ensure that they are in the most family-like settings
22 and settings that can best meet their treatment needs. The
23 department created the Bureau of Children's Coordinated Health
24 Policy and Supports to improve and build upon coordination and
25 oversight of children's behavioral health services and

1 placement of children with complex needs. We're also currently
2 restructuring our rates and payments as well as our contracts
3 for our child caring institutions to provide financial
4 certainty to providers and placement stability for our kids.

5 Under wellness, as mentioned previously, we have
6 created family impact teams which, through increased funding,
7 help to ensure families can access basic needs like adequate
8 food, housing and utilities. We are supporting families facing
9 behavioral health challenges which has been a major priority
10 for me and this department.

11 Families with a loved one in crisis should be able to
12 find the behavioral healthcare support they need wherever they
13 are, at home, at school or work or in the community. Ideally,
14 community-based services allow for interventions before a child
15 needs to be admitted into a hospital or a residential facility.

16 If someone does need a higher level of care, we're
17 also working on services and support for a healthy and
18 successful transition back to the community following a stay at
19 one of our hospitals through the creation of the psychiatric
20 residential treatment facilities, or PRTFs, to serve as a step
21 down or a step up.

22 We're also coordinating with partners across the state
23 to create crisis stabilization units to provide an alternative
24 to emergency department and psychiatric inpatient admission for
25 children who can be stabilized through treatment and recovery

1 within 72 hours.

2 We continue to work with other state agencies and our
3 community partners to expand and improve access to the array of
4 behavior health services in Michigan which also includes
5 investing in our state hospitals, our phone and our text lines
6 and improving access to community-based services, investing to
7 strengthen and enhance our behavioral healthcare workforce and
8 creating multiple points of access and coordinated quality
9 care, whether that's through our school-based centers or
10 certified community behavioral health clinics or any other
11 setting to make it easier for people and families to access
12 what they need.

13 We are also -- we've also developed a new MichiCANS
14 screening tool. This is a universal screening tool to screen
15 for behavioral health needs for children including youth in
16 foster care. This tool allows for both child welfare staff and
17 community healthcare partners to speak a common language and
18 expedite access to behavioral health services.

19 So both our publically-funded behavioral health system
20 and our child welfare system will be using the same screening
21 tool across the state and having the same access to the same
22 information of those outcomes. We are also implementing a
23 pilot project to work with our local CMH agencies to connect
24 families with mental health services as soon as children enter
25 foster care.

1 Finally, workforce. The department has increased pay
2 for our service specialists and provided retention bonuses for
3 our staff. We've established ongoing partnerships with
4 universities so that we can work to recruit more child welfare
5 specialists and we're developing an ongoing quality assurance
6 unit focused on providing feedback to investigators to improve
7 our investigation quality.

8 Finally, we are undergoing a comprehensive review of
9 all of our children services staffing which has not been
10 reviewed since maybe the '90s, possibly the '80s, to make sure
11 that we are asking our staff to do the jobs that we want them
12 to do with the resources that they need to do those jobs
13 focusing on increasing mentorship, reducing turnover and
14 encouraging shared decision-making and responsibility.

15 Through this agenda we believe we will continue to
16 strengthen families, we will keep kids safe in their homes. We
17 would like to note that the current MISEP reporting period is
18 for data collected from January 1st, 2023 through July 31st,
19 2023. Therefore, this data does not reflect a lot of our
20 current performance resulting from our continued reforms from
21 our Keeping Kids Safe agenda.

22 These are just some of the exciting ways, I did have
23 to whittle this down, that we are expanding services for
24 children and families in Michigan and, as I told this court
25 before, you have my full commitment to continue to work to

1 improve safety and outcomes for the children and families in
2 Michigan. I am proud of the work that we do. I applaud the
3 staff in our department for their efforts to ensure safety for
4 children and I look forward to continuing to improve our child
5 welfare system.

6 I would now like to turn it over to Director Starling
7 to make some more comments on the report.

8 MR. STARLING: Thank you, Director Hertel.

9 Good morning, your Honor. Adding to Director Hertel,
10 I also am very proud of our staff and some of the work we have
11 been able to accomplish. I see some of those continuous
12 positive outcomes for our children and our families in our
13 state on a daily basis and I know it is because of the
14 department staff that is very essential in facilitating these
15 positive outcomes.

16 I will start by addressing some of those positive
17 trends reflected in our MISEP 24 report. Since the MISEP 21
18 reporting period, adoption caseloads have consistently
19 improved. In the MISEP 21 report, adoption caseload compliance
20 was around 74.2 percent. Adoption caseload compliance was 85.5
21 in MISEP 23 and at 88.1 in the MISEP 24 report which, again,
22 demonstrates some significant change and commitment from our
23 department and this commitment would exit monitoring with one
24 more period of increase of performance which I firmly expect
25 with our department.

1 In addition, the department has demonstrated positive
2 trending towards the requirements to support the youth
3 transitioning to adult and permanency planning which is our
4 provision to 6.37 and to reduce the number of sibling groups
5 that are separated upon placement in foster care which is
6 provision 6.6A. We anticipate continued positive trending
7 performance for both of these provisions which will allow both
8 provisions to exit the MISEP report.

9 The MISEP 24 report also documents an improved
10 performance in certain areas. One, the assessment of service
11 plans which is 6.19; sibling visits which is 6.24; initial
12 medical and mental health examinations which is 6.25 and many
13 other provisions. As to maltreatment in care, the department
14 takes seriously the increased maltreatment in care rate and has
15 implemented multiple strategies to reduce harm to children who
16 are in foster care.

17 To start, we've implemented a series of strategies to
18 prevent MIC incidents from happening in the first place which
19 includes, the department has developed a mixed statewide plan
20 to remediate MIC altogether and focuses on getting to the root
21 causes and really determining necessary enhancements of all
22 staff and provider training and supports as needed.

23 The department also established a work group to
24 specifically address MIC prevention of remediation earlier this
25 year. The work group relies heavily on what the data tells us

1 about MIC events and what actions could have potentially
2 prevented the MIC event to begin with.

3 Through this work group the department has modified
4 the role of kinship support workers to provide additional
5 supports to relative providers throughout the life of a case.
6 The work group is also working with our MIC unit to improve the
7 placement collaboration units, procedures and roles.

8 Our leadership is also consistently analyzing MIC data
9 to review the latest trends of MIC to increase awareness and
10 drive the next steps. This includes establishing data sets to
11 review in detail with BSC directors to support prevention
12 strategy development and also our department is engaged with
13 Oklahoma on their efforts to reduce MIC at the suggestion of
14 our Michigan monitoring team.

15 We have also taken steps to update and improve our MIC
16 investigation procedures. For example, in September of '23,
17 the MIC unit implemented a uniform disposition format. This
18 new format ensures that all statutory elements of abuse or
19 neglect are addressed when determining the outcome of an
20 investigation.

21 The department also created a new streamline tool for
22 supervisors to review investigations based off of supervisor
23 feedback. The tool was significantly shortened from 91
24 questions down to 69 questions. The tool also includes
25 questions about the new uniform disposition format.

1 The department also implemented review by the director
2 of the MIC unit on all substantiated cases arising from
3 conflict of care facilities and in June of 2024 all MIC unit
4 staff were retrained on the new maltreatment types to increase
5 consistency with dispositions. We are confident that through
6 these reform efforts our MIC investigations will continue to be
7 more uniform and thorough and ultimately keep kids safe in
8 care.

9 We are confident that -- also that with the work that
10 we are doing in conjunction with our BSC directors and also our
11 staff that we have a keen focus on what is needed to progress
12 some of our MIC data and also ensure that new staff coming in
13 understand the importance and the paramount importance of
14 making sure that we have a keen focus of all of our kids in
15 care but also making sure we remediate those issues before they
16 become a larger issue in our data.

17 I don't know if Neil is back on the call at this time.
18 I will turn it back over to him for more information, also
19 rebuttal.

20 MR. GIOVANATTI: Can you hear me okay?

21 MR. STARLING: Yes, I can.

22 MR. GIOVANATTI: I apologize. I have been switching
23 between computers and phones, literally nothing is working. If
24 I fall off again, apologizes.

25 Your Honor, I'm going to address two specific

1 provisions that the DHHS disagrees with the court -- or with
2 the monitoring team's findings in the MISEP 24 report. First,
3 on the validation of the department's MIC rate, the 6.1 number
4 that Ms. Bartosz discussed as well as Ms. Crummy, as the court
5 is aware, the monitoring team has been conducting a review of
6 unsubstantiated MIC cases. The department has raised many
7 concerns about this review process and continues to hold these
8 concerns today.

9 As we did last year, the department intends to file a
10 response to MMT's MIC investigation report with the court under
11 seal later today or early tomorrow and that will address the
12 specific MIC investigations that the monitoring -- that MMT
13 disagrees with the monitors.

14 For purposes of this hearing and for the MISEP 24
15 report, our main concern is that the department's reported MIC
16 rate has not been, for years now, been validated by the
17 monitoring team and, accordingly, the department has not been
18 assessed for compliance as to provision 6.1 of the MISEP.

19 It's been numerous reporting periods since the
20 monitoring team has validated MDHHS's MIC rate for purposes of
21 measuring compliance with 6.1. I also think it's noteworthy
22 that MMT's review of the unsubstantiated MIC investigations
23 only began when DHHS had achieved what would have otherwise
24 been compliance with 6.1 during fiscal year 2020, when DHHS's
25 reported MIC rate was 4.69 MIC incidences per 100,000 days in

1 foster care, far below the then standard of 9.67.

2 DHHS's reported MIC rate is also the best comparison
3 to the federal indicator which is the performance metric for
4 provision 6.1 because MDHHS's reported MIC rate is
5 appropriately compared to other states' reported MIC rates.
6 The federal indicator is essentially the average of every
7 state's reported MIC rates and the other states' MIC
8 investigations are not heavily scrutinized by the federal
9 government in compiling the data set that establishes the
10 federal indicators.

11 Through the monitoring team's MIC review process, DHHS
12 is essentially being held to a higher standard than other the
13 states and the review process has also now skewed DHHS's
14 reported MIC rate. We know this because DHHS has incorporated
15 much of the feedback the monitors originally provided through
16 their MIC investigation process which has led to a substantial
17 increase in the percentage of cases that are substantiated and
18 in turn, an increase in MDHHS's MIC rate.

19 As Ms. Bartosz mentioned before, the MIC rate has
20 increased to 14.5, I believe it is. That is at least in part
21 relative to or related to the monitors' review. The monitoring
22 team has also not conveyed any standard at which it will start
23 to validate the MDHHS's MIC rate. For example, if under the
24 next review for the next fiscal year the monitoring team finds
25 only one or two investigations -- agrees with DHHS findings,

1 it's not clear the MIC rate will be validated for purposes of
2 6.1 compliance at that time.

3 Suffice it to say, your Honor, the department, the
4 court, the monitoring team need a better way of assessing
5 performance towards 6.1. The department does not dispute that
6 the MIC rate must decrease and Director Starling commented on
7 many efforts already being undertaken by the department to
8 decrease the MIC rate but we must have some sort of clarity as
9 to what a validated MIC rate will be and what we need to do to
10 achieve a validated MIC rate. So we invite further discussions
11 with the court, perhaps Magistrate Judge Grand again and the
12 monitoring team on this specific issue of validation for 6.1.

13 The second major area that we find disagreement with
14 the monitors is for MISEP provision 5.1. 5.1 addresses
15 contract agency evaluation, what oversight of congregate care
16 institutes, CCI, child placement agencies. Over the past three
17 to four years the department has significantly reformed its
18 oversight process with the advice of the team, the monitoring
19 team, specifically Mr. Ryan.

20 While we are always, of course, receptive to guidance
21 and ways to improve this process, we believe the structures
22 that are now in place are sufficient to properly oversee CCIs
23 and CPAs. Accordingly, while the MISEP 24 report finds that
24 DHHS is not in compliance with provision 5.1, we disagree with
25 this finding.

1 Provision 5.1 specifically calls for DHHS to conduct
2 contract evaluations under specific time frames and to conduct
3 annual and unannounced inspections of licensed facilities. The
4 department has long complied with the provisions as written in
5 the agreement. However, because the monitoring team has
6 consistently found DHHS out of compliance because it believes
7 that the department does not comply with some unstated
8 subjective standard for compliance with this term, like the MIC
9 validation, DHHS is essentially aiming at an unknown target.

10 It's not clear what would be compliance and without an
11 objective measure, it is not clear what the department must do
12 to achieve compliance with 5.1. Thus, like the MIC validation,
13 we invite further conversation with the monitoring team and the
14 court to establish an objective and achievable standard for
15 5.1.

16 I will also note that many of the examples are
17 antidotes that are included in the MISEP 24 report regarding
18 licensed facilities and licensed foster homes, do not
19 accurately reflect anything related to the department's
20 oversight of these facilities, rather they appear to be
21 examples of unfortunate incidents that have occurred in the
22 licensed placement and the department then taking appropriate
23 action to revoke a license or otherwise remedy concern for that
24 placement.

25 In essence, I would urge this court and anyone else

1 listening to read these examples in the report carefully and
2 not incorrectly assume that the department did something
3 inappropriate related to those examples. DHHS also intends to
4 file a short response specifically related to those examples.
5 We'll file that likely tomorrow to provide additional facts and
6 context for the court's consideration.

7 With that, your Honor, if you have any questions, I'm
8 happy to respond to them or direct them to Director Hertel or
9 Director Starling as is appropriate.

10 THE COURT: Thank you. I have a couple remarks and
11 then I will ask Mr. Ryan and Ms. Crummy if they have anything
12 further they wish to say before we close. First I would like
13 to congratulate the state for tremendous progress in many
14 areas. 33 areas of concern have been moved out of supervision,
15 11 additional areas have been moved to structural supervision
16 which no longer requires active monitoring by the court.

17 We are down to about -- well, under 30 areas that the
18 state still is working on and I think we all agree that the
19 most important and difficult area to concur is the safety of
20 the children in foster care, the maltreatment in care that we
21 have been talking about for the last hour or so.

22 I don't doubt for a minute that everyone involved in
23 this case prioritizes maltreatment in care as the number one
24 issue still outstanding and most important to the children
25 we're responsible for. The only real question is how do we get

1 there and I am really quite impressed with what the state has
2 already done to move in the right direction.

3 Director Hertel gave us a comprehensive review of all
4 the steps that have been taken and all of them are important
5 and well-founded but we're not getting there yet and I
6 understand Mr. Giovanatti's, am I pronouncing that right,
7 concern that no actual validation rate has been established,
8 that they're shooting at an unknown target and perhaps that's
9 step one that needs to be taken.

10 In my view, we've made great progress over the last
11 six months in particular and I think it would be a good idea to
12 meet again with Magistrate Grand and all the key players from
13 both sides either in person or by Zoom, whichever works better
14 for the parties, and see if there are some tweaks we can make
15 to the supervision and organization of maltreatment in care
16 issues to move us forward because no matter what your position
17 on whether progress has been adequate or not, you can't
18 possibly look at the 450-some instances of maltreatment in care
19 and not say what can we do about this, what more can we do to
20 ensure the safety of our children and whether the number is 418
21 or 457, it's too many, it's too high. We've got to get it
22 down.

23 Maybe it means putting one person in charge of that
24 issue above all else, relieving that person of other
25 responsibilities in lieu of taking on the MIC issue. I'm going

1 to direct the parties with the participation of the monitors as
2 well to set something up with Magistrate Judge Grand in the
3 next 60 days and to present that to me, within 90 days, a
4 revised plan or additional steps to be taken to address the
5 maltreatment in care issue.

6 I think once we get that issue under control, and I
7 don't need to suggest there haven't been great efforts by all
8 parties to do that, but once we get that issue under control,
9 it's pretty much a straight course to exit from this
10 supervision that's been going on now for many years. Everyone
11 has made great progress, there's still a road to go.

12 So Mr. Ryan or Ms. Crummy, do you have anything
13 further you would like to say?

14 MR. RYAN: Your Honor, I would just add that I, like
15 you, was impressed by the department's commitments around child
16 safety and I think that the starting place for the discussion
17 with the magistrate should be the department's own blueprint
18 that Director Starling referenced, the initiatives that the
19 department has put forward to ensure maltreatment in care.

20 I don't think we should come to the table trying to
21 brainstorm new solutions. If the department has a set of
22 strategies and solutions that it's put in place, those could
23 become the bullwork of the commitments going forward and we can
24 focus on those.

25 THE COURT: I agree. I agree. We've already got a

1 very fine foundation, we can build on that, we don't have to
2 tear it down and go from scratch, we shouldn't.

3 Ms. Crummy, anything?

4 MS. CRUMMY: No, I don't have anything to add, your
5 Honor.

6 THE COURT: Thank you. Anyone else have any final
7 questions or comments? I'm going to let Judge Grand know that
8 we're in the process of getting it set up so he can find a date
9 that's convenient for everyone. It may not be as easy as all
10 that over the next 60 days since it's summertime, a lot of
11 vacations but we'll do our best to get something set up. Okay.
12 Thank you, everyone.

13 MR. RYAN: Judge, maybe one more thing, I'm sorry,
14 but perhaps if the state is willing, the state could share with
15 the court and the monitors and the plaintiffs that plan so that
16 we can all review that before we meet with Judge Grand.

17 THE COURT: Good idea. Can we do that, Ms. Hertel or
18 Mr. Giovanatti?

19 MR. GIOVANATTI: Yes, your Honor.

20 THE COURT: The sooner the better. Thank you.

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

s/ Stacy K. Locher
STACY K. LOCHER, CSR-5699,
Federal Official Court Reporter

07/09/2024
Date